

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1387**

**Introduced by Assembly Member Yee**

February 21, 2003

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An act to ~~amend Sections 1798.3, 1798.16, 1798.24, 1798.70, and 1798.75 of the Civil Code, and to add Sections 9174 and 9926 to the~~ *add Sections 9174, 9926, 9927, 9928, and 9929 to the* Government Code, relating to the Legislature.

LEGISLATIVE COUNSEL'S DIGEST

AB 1387, as amended, Yee. Legislature.

~~Under existing state law, state agencies, other than the Legislature, local agencies, and other specified agencies, are required to comply with the Information Practices Act of 1977 regulating the agencies' maintenance and disclosure of personal information.~~

~~This bill would apply the Information Practices Act of 1977 to each house of the Legislature and make other conforming changes in that act.~~

Under existing law, each house of the Legislature appoints its own employees.

This bill would ~~provide~~ *require* that each house of the Legislature ~~shall~~ use a unique number other than an individual's social security number to identify its employees, beginning January 1, 2005.

Under existing law, state agencies in the executive branch are required to establish a permanent privacy policy that includes certain provisions.

This bill would ~~provide~~ *require* that each house of the Legislature ~~shall~~ establish and maintain a permanent privacy policy that includes

the principles set forth in existing law for state agencies. *The bill would also require each house to provide specified notice to persons before collecting personal information, to establish rules for persons using this personal information, to establish safeguards to protect the confidentiality of the personal information, and to provide notification of any breach in security.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 1798.3 of the Civil Code is amended to~~  
2     ~~read:~~  
3     ~~1798.3. As used in this chapter:~~  
4     ~~(a) The term “personal information” means any information~~  
5     ~~that is maintained by an agency that identifies or describes an~~  
6     ~~individual, including, but not limited to, his or her name, social~~  
7     ~~security number, physical description, home address, home~~  
8     ~~telephone number, education, financial matters, and medical or~~  
9     ~~employment history. “Personal information” includes statements~~  
10    ~~made by, or attributed to, the individual.~~  
11    ~~(b) The term “agency” means every state office, officer,~~  
12    ~~department, division, bureau, board, commission, or other state~~  
13    ~~agency, and each house of the Legislature, except that the term~~  
14    ~~“agency” does not include:~~  
15    ~~(1) An agency established under Article VI of the California~~  
16    ~~Constitution.~~  
17    ~~(2) The State Compensation Insurance Fund, except as to any~~  
18    ~~records that contain personal information about the employees of~~  
19    ~~the State Compensation Insurance Fund.~~  
20    ~~(3) A local agency, as defined in subdivision (b) of Section~~  
21    ~~6252 of the Government Code.~~  
22    ~~(c) The term “disclose” means to disclose, release, transfer,~~  
23    ~~disseminate, or otherwise communicate all or any part of any~~  
24    ~~record orally, in writing, or by electronic or any other means to any~~  
25    ~~person or entity.~~  
26    ~~(d) The term “individual” means a natural person.~~  
27    ~~(e) The term “maintain” includes maintain, acquire, use, or~~  
28    ~~disclose.~~

1 ~~(f) The term “person” means any natural person, corporation,~~  
2 ~~partnership, limited liability company, firm, or association.~~

3 ~~(g) The term “record” means any file or grouping of~~  
4 ~~information about an individual that is maintained by an agency~~  
5 ~~by reference to an identifying particular such as the individual’s~~  
6 ~~name, photograph, finger or voice print, or a number or symbol~~  
7 ~~assigned to the individual.~~

8 ~~(h) The term “system of records” means one or more records~~  
9 ~~that pertain to one or more individuals, are maintained by any~~  
10 ~~agency, and from which information is retrieved by the name of an~~  
11 ~~individual or by some identifying number, symbol, or other~~  
12 ~~identifying particular assigned to the individual.~~

13 ~~(i) The term “governmental entity,” except as used in Section~~  
14 ~~1798.26, means any branch of the federal government or of the~~  
15 ~~local government.~~

16 ~~(j) The term “commercial purpose” means any purpose that~~  
17 ~~has financial gain as a major objective. It does not include the~~  
18 ~~gathering or dissemination of newsworthy facts by a publisher or~~  
19 ~~broadcaster.~~

20 ~~(k) The term “regulatory agency” means the Department of~~  
21 ~~Financial Institutions, the Department of Corporations, the~~  
22 ~~Department of Insurance, the Department of Real Estate, or an~~  
23 ~~agency of the United States or of any other state that is responsible~~  
24 ~~for regulating financial institutions.~~

25 ~~SEC. 2.—Section 1798.16 of the Civil Code is amended to read:~~

26 ~~1798.16. (a) Whenever an agency collects personal~~  
27 ~~information, the agency shall maintain the source or sources of the~~  
28 ~~information, unless the source is the data subject or he or she has~~  
29 ~~received a copy of the source document, including, but not limited~~  
30 ~~to, the name of any source who is an individual acting in his or her~~  
31 ~~own private or individual capacity. If the source is an agency,~~  
32 ~~governmental entity, or other organization, such as a corporation~~  
33 ~~or association, this requirement can be met by maintaining the~~  
34 ~~name of the agency, governmental entity, or organization, as long~~  
35 ~~as the smallest reasonably identifiable unit of that agency,~~  
36 ~~governmental entity, or organization is named.~~

37 ~~(b) On or after July 1, 2001, unless otherwise authorized by the~~  
38 ~~Department of Information Technology pursuant to Executive~~  
39 ~~Order D-3-99, whenever an agency other than a house of the~~  
40 ~~Legislature electronically collects personal information, as~~

1 defined by Section 11015.5 of the Government Code, the agency  
2 shall retain the source or sources or any intermediate form of the  
3 information, if either are created or possessed by the agency,  
4 unless the source is the data subject that has requested that the  
5 information be discarded or the data subject has received a copy  
6 of the source document.

7 (c) Whenever a house of the Legislature electronically collects  
8 personal information, as defined by Section 11015.5 of the  
9 Government Code, the house shall retain the source or sources or  
10 any intermediate form of the information, if either are created or  
11 possessed by the house, unless the source is the data subject that  
12 has requested that the information be discarded or the data subject  
13 has received a copy of the source document.

14 (d) The agency shall maintain the source or sources of the  
15 information in a readily accessible form so as to be able to provide  
16 it to the data subject when the subject inspects any record pursuant  
17 to Section 1798.34. This section does not apply if the source or  
18 sources are exempt from disclosure under the provisions of this  
19 chapter.

20 SEC. 3.—Section 1798.24 of the Civil Code is amended to read:  
21 1798.24.—An agency may not disclose personal information  
22 in a manner that would link the information disclosed to the  
23 individual to whom it pertains unless the disclosure of the  
24 information is:

25 (a) To the individual to whom the information pertains.

26 (b) With the prior written voluntary consent of the individual  
27 to whom the record pertains, but only if that consent has been  
28 obtained not more than 30 days before the disclosure, or in the time  
29 limit agreed to by the individual in the written consent.

30 (c) To the duly appointed guardian or conservator of the  
31 individual or a person representing the individual provided that it  
32 can be proven with reasonable certainty, through the possession of  
33 agency forms, documents, or correspondence, that such person is  
34 the authorized representative of the individual to whom the  
35 information pertains.

36 (d) To those officers, employees, attorneys, agents, or  
37 volunteers of the agency that has custody of the information if the  
38 disclosure is relevant and necessary in the ordinary course of the  
39 performance of their official duties and is related to the purpose for  
40 which the information was acquired.

~~(c) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.~~

~~(f) To a governmental entity when required by state or federal law.~~

~~(g) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Legislative Open Records Act (Article 3.5 (commencing with Section 9070) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code).~~

~~(h) To a person who has provided the agency with advance adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.~~

~~(i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist which affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure may not be made if it is in conflict with other state or federal laws.~~

~~(j) To the State Archives of the State of California as a record that has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.~~

~~(k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.~~

~~(l) To any person pursuant to a search warrant.~~

~~(m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.~~

~~(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.~~

~~(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.~~

~~(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law that the agency is responsible for enforcing.~~

~~(q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.~~

~~(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, may not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.~~

~~(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the Member, where the Member has permission to obtain the information from the individual to whom it pertains or where the Member provides reasonable assurance that he or she is acting on behalf of the individual.~~

~~(t) To the University of California or a nonprofit educational institution conducting scientific research, provided the request for information includes assurances of the need for personal information, procedures for protecting the confidentiality of the~~

1 information and assurances that the personal identity of the subject  
2 will not be further disclosed in individually identifiable form.

3 (u) To an insurer if authorized by Chapter 5 (commencing with  
4 Section 10900) of Division 4 of the Vehicle Code.

5 This article may not be construed to require the disclosure of  
6 personal information to the individual to whom the information  
7 pertains when that information may otherwise be withheld as set  
8 forth in Section 1798.40.

9 (v) Pursuant to Section 1909, 8009, or 18396 of the Financial  
10 Code.

11 SEC. 4. ~~Section 1798.70 of the Civil Code is amended to read:~~  
12 ~~1798.70. This chapter shall be construed to supersede any~~  
13 ~~other provision of state law, including Section 6253.5 of the~~  
14 ~~Government Code, or any exemption in Section 6254, 6255, 9075,~~  
15 ~~or 9080 of the Government Code, that authorizes any agency to~~  
16 ~~withhold from an individual any record containing personal~~  
17 ~~information that is otherwise accessible under the provisions of~~  
18 ~~this chapter.~~

19 SEC. 5. ~~Section 1798.75 of the Civil Code is amended to read:~~  
20 ~~1798.75. This chapter does not supersede Chapter 3.5~~  
21 ~~(commencing with Section 6250) of Division 7 of Title 1 or Article~~  
22 ~~3.5 (commencing with Section 9070) of Chapter 1.5 of Part 1 of~~  
23 ~~Division 2 of Title 2 of the Government Code, except as to the~~  
24 ~~provisions of Sections 1798.60, 1798.69, and 1798.70.~~

25 SEC. 6. —

26 SECTION 1. Section 9174 is added to the Government Code,  
27 to read:

28 9174. On and after January 1, 2005, each house of the  
29 Legislature shall use a unique identifying number other than an  
30 individual's social security number to identify its employees.

31 SEC. 7. —

32 SEC. 2. Section 9926 is added to the Government Code, to  
33 read:

34 9926. (a) Each house of the Legislature shall establish and  
35 maintain a permanent privacy policy; ~~in adherence with the~~  
36 ~~Information Practices Act of 1977 (Title 1.8 (commencing with~~  
37 ~~Section 1798) of Part 4 of Division 3 of the Civil Code);~~ that  
38 includes, but is not limited to, the following principles:

39 (1) Personally identifiable information is obtained only  
40 through lawful means.



(2) The purposes for which personally identifiable data are collected are specified at or prior to the time of collection, and any subsequent use is limited to the fulfillment of purposes not inconsistent with those purposes previously specified.

(3) Personal data is not disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the subject of the data, or as authorized by law or regulation.

(4) Personal data collected is relevant to the purpose for which it is collected.

(5) The general means by which personal data is protected against loss, unauthorized access, use modification, or disclosure is posted, unless that disclosure of general means would compromise legitimate objectives of either house of the Legislature or law enforcement purposes.

(b) Each house of the Legislature shall designate a position within the house, the duties of which shall include, but not be limited to, responsibility for the privacy policy within that house.

SEC. 3. Section 9927 is added to the Government Code, to read:

9927. Each house of the Legislature shall provide, on or with any form used to collect personal information from individuals, the notice specified in this section. When contact with the individual is of a regularly recurring nature, an initial notice followed by a periodic notice of not more than one-year intervals satisfies this requirement. This requirement is also satisfied by annual notification to individuals of the availability of the notice. The notice shall include all of the following:

(a) The title, business address, and telephone number of the official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.

(b) The authority, whether granted by statute, regulation, or executive order, that authorizes the maintenance of the information.

(c) With respect to each item of information, whether submission of the information is mandatory or voluntary.

(d) The consequences, if any, of not providing all or any part of the requested information.



1     (e) *The principal purpose or purposes within the Legislature*  
2 *for which the information is to be used.*

3     *The notice required by this section does not apply to*  
4 *requirements for an individual to provide his or her name,*  
5 *identifying number, photograph, address, or similar identifying*  
6 *information if this information is used only for the purpose of*  
7 *identification and communication with the individual by the*  
8 *Legislature, except that requirements for an individual's social*  
9 *security number shall conform to the provisions of federal law.*

10    SEC. 4. *Section 9928 is added to the Government Code, to*  
11 *read:*

12     9928. (a) *Each house of the Legislature shall establish rules*  
13 *of conduct for persons involved in the design, development,*  
14 *operation, disclosure, or maintenance of records containing*  
15 *personal information, and instruct each such person with respect*  
16 *to those rules.*

17     (b) *Each house of the Legislature shall establish appropriate*  
18 *and reasonable administrative, technical, and physical safeguards*  
19 *to ensure the security and confidentiality of records, and to protect*  
20 *against anticipated threats or hazards to their security or integrity*  
21 *that could result in any injury.*

22    SEC. 5. *Section 9929 is added to the Government Code, to*  
23 *read:*

24     9929. (a) *If a house of the Legislature owns or has license to*  
25 *computerized data that includes personal information, following*  
26 *discovery or notice of any breach in the security of its computerized*  
27 *data system the house shall notify any person whose unencrypted*  
28 *personal information was, or is reasonably believed to have been,*  
29 *thereby acquired by an unauthorized person. The notification shall*  
30 *be made in the most expedient time possible and without*  
31 *unreasonable delay, consistent with subdivision (c) and any*  
32 *measures necessary to determine the scope of the breach and*  
33 *restore the reasonable integrity of the data system.*

34     (b) *If a house of the Legislature maintains computerized data*  
35 *that includes personal information that the house does not own or*  
36 *have license to, immediately following discovery or notice of any*  
37 *breach in the security of its computerized data system the house*  
38 *shall notify the owner or licensee of any personal information that*  
39 *was, or is reasonably believed to have been, thereby acquired by*  
40 *an unauthorized person.*

1 (c) The notification required by this section may be delayed if  
2 a law enforcement agency determines that the notification will  
3 impede a criminal investigation.

4 (d) For purposes of this section, “breach in the security” of a  
5 system means the unauthorized acquisition of computerized data  
6 that compromises the security, confidentiality, or integrity of  
7 personal information maintained by the house of the Legislature.  
8 Good faith acquisition of personal information by an employee or  
9 agent of either house of the Legislature for the purposes of the  
10 house is not a breach of the security of the system, provided that  
11 the personal information is not made subject to unauthorized  
12 disclosure.

13 (e) For purposes of this section, “personal information” means  
14 any information that is maintained by an agency that identifies or  
15 describes an individual, including, but not limited to, his or her  
16 name, social security number, physical description, home address,  
17 home telephone number, education, financial matters, and  
18 medical or employment history. It includes statements made by, or  
19 attributed to, the individual.

20 (f) For purposes of this section, “personal information” does  
21 not include information that is lawfully made available to the  
22 general public from federal, state, or local government records.

23 (g) For purposes of this section, notification may be provided  
24 by one of the following methods:

25 (1) Written notice.

26 (2) E-mail.

27 (3) Electronic notice, if the notice provided is consistent with  
28 the provisions regarding electronic records and signatures set  
29 forth in Section 7001 of Title 15 of the United States Code.

30 (4) Substitute notice, if the cost of providing notice would  
31 exceed two hundred fifty thousand dollars (\$250,000), or the  
32 affected class of subject persons to be notified exceeds 500,000, or  
33 the house of the Legislature does not have sufficient contact  
34 information. Substitute notice may be provided by performing both  
35 of the following:

36 (A) Conspicuous posting of the notice on the Web site page of  
37 each house of the Legislature.

38 (B) Notification to major statewide media.

39 (h) Notwithstanding subdivision (g), if a house of the  
40 Legislature maintains its own notification procedures as part of an

1 *information security policy for the treatment of personal*  
2 *information and its procedures are consistent with the timing*  
3 *requirements of this section, it shall be deemed to be in compliance*  
4 *with the notification requirements of this section if it notifies*  
5 *subject persons in accordance with its policies in the event of a*  
6 *breach in the security of the system.*

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